

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”)² in the above-captioned proceeding and its corresponding Initial Regulatory Flexibility Analysis.³ In the FNPRM, the Federal Communications Commission (the “Commission”) requests further public comment on

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² In the Matter of Connect America Fund, WC Docket No. 10-90, Universal service Reform – Mobility Fund, WT Docket No. 10-208, Further Notice of Proposed Rulemaking (Rel. March 7, 2017) (“FNPRM”).

³ The Commission has a statutory duty to consider significant alternatives to reduce the burden of its rules on small providers. 5 U.S.C. § 601-12, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, 110 Stat. 857 (1996). NTCA’s proposals herein should be considered as alternative, less burdensome proposals in response to the Commission’s Initial Regulatory Flexibility Analysis. FNPRM, Appendix C.

the parameters for the challenge process for the Mobility Fund Phase II (“MF II”).⁴ The Commission specifically seeks comment on two potential structures for the challenge process,⁵ stating that it intends “to take the most effective parameters from these various options, as well as possible alternatives” to assemble a structure for the challenge process.⁶

Both options on which the Commission specifically seeks comment require a party to challenge the presumed coverage area as filed in the challenged party’s Form 477 data. This presumption ignores the known fact that the Form 477 data is unreliable, overstates coverage and is based on inconsistent metrics. It places the burden of disproving information known to be riddled with inaccuracies squarely on the shoulders of the party with the worst access to the underlying data. Given the potentially devastating consequences of lost funding to providers and lost coverage to consumers, consistent with the challenge process adopted in the context of updating non-model “rate-of-return” wireline universal service support, the Commission should instead require providers who have actual knowledge of their coverage territory and who certified their coverage to file the underlying data that they presumably used to validate that coverage prior to certification. This process would permit the Commission to move quickly, while also being data driven and consistent with the underlying requirement that ties the analysis of competition to specific geographic areas. It is also efficient and provides the most accurate results by placing the burden of persuasion on the party in possession of the best information.

⁴ FNPRM, ¶ 225.

⁵ See, “Option A,” at FNPRM ¶¶ 232 – 240, based on a proposal submitted by U.S. Cellular, and “Option B” at FNPRM ¶¶ 241 – 246, based on a joint proposal submitted by AT&T, ATN and Blue Wireless.

⁶ FNPRM, ¶ 231.

II. IT IS WIDELY KNOWN THAT THE 477 DATA IS INACCURATE AND OVERSTATES COVERAGE IN RURAL AREAS

Form 477 data was not intended to be a completely accurate representation of areas served by an unsubsidized competitor and it is known to be riddled with inaccuracies and imprecision.⁷ Although it is certified by carriers, carriers do not utilize a common coverage standard in reporting such data. Instead Form 477 relies on carriers to report coverage based on the minimum advertised upload and download speeds associated with a certain network technology in a frequency band.⁸

When the FCC issued its Form 477 data collection, it issued instructions for carriers to “[r]eport a list ... of census tracts, “in which your mobile wireless broadband service is advertised and available to actual and potential subscribers.”⁹ The instructions define mobile wireless broadband service as a service that, “allows end users to receive information from and/or send information to the Internet from a mobile device and using a mobile network at information transfer rates exceeding 200 kbps in at least one direction.”¹⁰ Service is advertised

⁷ See, e.g., Opening Statement of Congressman Dave Loebsack at the Communications and Technology Subcommittee Hearing on March 22, 2017, describing the discrepancy between the FCC’s coverage data and his experience in Iowa. During this hearing, Loebsack announced the introduction of H.R. 1546, “The Rural Wireless Access Act of 2017,” a bill requiring the FCC to use standard definitions, collect coverage data in a consistent and robust way, improve the reliability and validity of its data, and increase the efficiency of its data collection. <https://www.congress.gov/115/bills/hr1546/BILLS-115hr1546ih.pdf>

⁸ FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions, OMB Control No. 3060-0816, p. 24 (“477 Instructions”), available at <https://transition.fcc.gov/form477/477inst.pdf>.

⁹ See, Mobile Broadband Service Availability Terms, link within 477 Instructions, p. 25.

¹⁰ 477 Instructions, p. 24.

and available in a census tract if the provider is “advertising and actively making mobile broadband service available to actual and potential subscribers anywhere in the tract.”¹¹

This approach overstates where service is available since tracts reported as having service may also contain large areas where service is not available. This overstated coverage may not be as significant a problem in urban areas, where providers have a financial incentive to ensure ubiquitous coverage across geographically smaller census tracts with dense populations. But in more rural areas, there are likely to be gaps where it would not make financial sense to add a tower to fill in gaps, absent universal service support. Numerous commenters in this proceeding,¹² as well as the parallel wireline proceeding¹³ demonstrate that reliance on Form 477 deployment data certainly leads to the mistaken identification of areas served by unsubsidized competition. Form 477 data is not a reliable data point for the validation of the existence of an unsubsidized competitor and should not be used as a presumptively valid point from which a challenge process begins.

III. UNSUBSIDIZED COMPETITORS CLAIMING COVERAGE ARE IN THE BEST POSITION TO IDENTIFY AND CONFIRM GEOGRAPHIC COVERAGE

The Commission seeks comment on proposals that start from the presumption that data submitted as part of a Form 477 report correctly represents coverage areas and requires a party to

¹¹ See, Mobile Broadband Deployment Terms, link within 477 Instructions, p. 24.

¹² See, e.g., *ex parte* submissions of U. S. Cellular (Oct. 27, 2016), Competitive Carrier Association (Nov. 2, 2016), and Rural Wireless Association (Nov. 2, 2016).

¹³ See, e.g., Comments of RCN Telecom Services (Lehigh) LLC, In the Matter of the Connect America Fund, *et al.*, WC Docket No. 10-90 (filed Aug. 26, 2015), at 1 (stating that “the Bureau's determination appears to be incorrect to the extent that the Bureau relies only on the RCN deployment file [Form 477] and assumes that RCN served blocks constitute a 100% overlap with Irontron.”); Comments of Comcast Corporation, In the Matter of the Connect America Fund, *et al.*, WC Docket No. 10-90 (filed Aug. 28, 2015), at 1 (stating that while Form 477 data show its deployment to the census blocks at issue, it does not offer service to each individual location within those census blocks.).

“challenge” that data with documentation to support as assertion that an area is, in fact, not served by an unsubsidized competitor. This process inverts the burden of persuasion in a manner contrary to logic, as the Form 477 filings are known to overstate coverage claims. Such an approach shifts the burden of “proving a negative” (or really, “disproving a positive”) onto a party that has less access than the claimant to the data necessary to validate the claim. It also imposes a substantial and unrealistic burden on the small wireless providers who rely on universal service funding to cover rural areas of the country. The Commission recognized this very paradoxical concern in the rate-of-return universal service context when it noted, “we have learned that it is extremely difficult for a . . . provider to prove a negative – that a competitor is not serving an area. Rather, the purported competitor is in a much better position to confirm that it is offering service in a given area.”¹⁴

The Commission therefore has consistently sought to ensure in that context that the competitor offers service to on a more granular basis to individual locations within the area reported on Form 477 before revoking support for operations within that area. Indeed, in its most recent reforms in the wireline context affecting smaller carriers, the Commission reaffirmed this approach, indicating that it would in the future use the 477 data to make a *preliminary* determination of areas competitively served and published the list. Identified competitors will then need to confirm that they actually offer service to individual locations within the census blocks where they reported deployment on the FCC Form 477, with evidence supporting the claim. If a competitor fails to supply the supporting information – if it fails to come forward

¹⁴ In the Matter of the Connect America Fund, *et al.*, WC Docket No. 10-90, *et.al.* Report and Order, Order, and Order on Reconsideration, ¶ 130 (Rel. March 30, 2016) (“March CAF Order”), citing Wireline Competition Bureau Publishes Preliminary Determination of Rate of Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors, WC Docket No. 10-90, ¶19 (Rel. July 29, 2015).

with the information that it presumably used as the basis for its Form 477 filing in the first instance – the area would be considered unserved by the competitor.¹⁵ This process achieves the proper balance of the relative burden on the parties by requiring the party in sole possession of the information of coverage to bring that data forward first, acknowledges the potentially devastating consequences of “false positives” that would eliminate funding in an area that does not in fact contain an unsubsidized competitor, and ultimately enables the targeting of support to those areas truly in need based upon a fact-driven analysis rather than suppositions about overstated coverage. NTCA’s proposal for MF II is based on this challenge process.¹⁶

Verizon has misleadingly claimed that this process would “turn this challenge process “on its head” because it “would presume that a census block is eligible for funding and would place virtually the entire burden of the challenge process . . . on carriers that receive no support from the universal service fund.”¹⁷ To the contrary, appropriately placing the initial burden on the party claiming coverage to substantiate/correct its claim makes the most sense and is the most efficient process as the unsubsidized competitor claiming service territory presumably has the best knowledge of its actual service boundaries. As between Verizon with the data it holds to back up the Forms 477 it has filed and a small wireless provider without any access to what was behind Verizon’s claims, why should the small rural provider be required to use substantial resources to guess at and recreate what Verizon already has on hand to substantiate those claims? That is an utterly inefficient process that creates perverse incentives for carriers seeking to

¹⁵ March CAF Order, ¶¶ 122-133

¹⁶ *See, ex parte* submission of NTCA – The Rural Broadband Association (Feb. 14, 2017).

¹⁷ *Ex parte* submission of Verizon at 3 (Feb. 16, 2017).

minimize universal service even as they *know* and *hold data* that would indicate significant portions of a rural area are *not* served by their operations.

Placing the burden of persuasion as NTCA suggests, and as the Commission has done in other contexts, would substantially reduce the burden for small providers and help ensure that the Commission does not mistakenly declare an area ineligible for funding and doom consumers there to substandard or a complete lack of service, contrary to the Commission's own goals. It would also allow affected parties to move forward in a deliberate manner with an accurate understanding of where actual service boundaries lie. Moreover, requiring carriers claiming unsubsidized coverage to substantiate their claims is consistent with Commission precedent.

IV. NTCA PROPOSAL FOR DETERMINING AREAS INELIGIBLE FOR MF II SUPPORT AND THE CHALLENGE PROCESS

Consistent with these considerations, the Commission should adopt the following data confirmation and challenge process:

- 1) Using the available Form 477 data, the Commission should publish a list identifying
 - a) all census blocks in which an unaffiliated, unsubsidized competitor(s) is believed to be able to provide voice and LTE data to all or a substantial portion of the geographic area in question; and b) areas for which no unsubsidized competitor is identified and therefore eligible for funding.¹⁸

¹⁸ The Commission determined that any census block that is not fully covered by unsubsidized 4G LTE, defined as having minimum advertised download speeds of at least 5 Mbps, will contain areas that are eligible for support in the MF II auction, FNPRM ¶¶ 51-52. The Commission neglected to require an upload speed in its Order. However, this approach is inconsistent with the Commission's goals of providing mobile broadband to all areas of the country and is the subject of a Petition for Reconsideration. See, [Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification](#), WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-11) (filed Apr. 12, 2017) (asking the Commission to reconsider its 5 Mbps download area eligibility speed threshold in favor of a 10 Mbps download/1 Mbps upload threshold).

- 2) The identified unsubsidized competitor(s) should then have 60 days to file information that would bridge the gap between what is shown on the Form 477 and what is necessary to make a final determination of competitive presence. The identified competitor(s) should be required to file with the Commission and serve on other service providers in the identified geographic area(s) a declaration of service verifying its ability to provide service in the area(s) that it claims to serve, backed by an officer certification.¹⁹ The declaration of service should include technical support, including an engineering (propagation) map that demonstrates the claimed coverage using a -85 dB measure.²⁰ If no declaration of service is filed, the competitor is presumed not to offer unsubsidized service in the census block(s) in question, notwithstanding the Form 477 report, and the area will be deemed eligible for MF II funding.
- 3) The notified competitor(s) should then be provided 30 days to challenge the declaration of service. The competitor(s) may submit actual speed data from hardware- or software-based drive tests or app-based tests that spatially cover the challenged area. The submission would be substantiated by the certification of a qualified engineer, under penalty of perjury.²¹

¹⁹ The information should support the 477 submission and should not include speculative future build out plans.

²⁰ The Commission should make clear that, if it is found at any time after the challenge process is completed, a provider that has made a declaration and the other requisite related showings does not in fact meet the applicable standards, mobility fund support will be restored to the competitor so that service may be sustained – in addition to any sanctions that may be applicable to the competitor and a retroactive restoration of support for the affected provider.

²¹ Unsubsidized providers would make a similar showing to demonstrate that they serve an area that was erroneously deemed eligible for funding.

- 4) The Commission would reach a decision and the party declaring an area to be served and thus ineligible for MF II funding would have the burden of proving an area IS served by a preponderance of the evidence. This process would be data driven and consistent with the underlying requirement that ties the analysis of competition to specific geographic areas and it provides the most accurate results. It is also timely and efficient since the Commission would have all of the information necessary to make a determination within 90 days of its publication of a MF II ineligibility/eligibility list based on the 477 data. This process is also not unduly burdensome, offering the would-be unsubsidized competitor more than ample time to identify and confirm its geographic coverage and notify the Commission and affected USF recipients.

While this process would on its face provide affected universal service fund mobility recipients only 30 days to reply, by virtue of noticing their areas included on the preliminary list of areas in question published by the Commission, they could undertake work that might be needed to validate or deny the claimed coverage of the competitor. This timeline would help ensure that the Commission and affected parties can move forward in a deliberate manner with an accurate understanding of where service boundaries lie.

Moreover, it would be far more efficient than “Option A” which presumes coverage, requiring another provider or a state or local government to challenge the presumption based on “good faith belief” and shapefile map of the challenged area and then a response with engineering backup from the challenged provider. It will also create a more accurate map and more appropriately apportion the burdens than “Option B” which also presumes coverage, but

requires challenging parties (typically a small provider with limited resources) to file a shapefile map AND actual download speed test data for the challenged area.

NTCA's approach is not only consistent with the Commission's prior approach to unsubsidized competition in other contexts involving smaller providers, but it ensures that the Commission (and potentially affected mobility fund recipients) would receive better information than the Form 477 validating coverage from the party in possession of the best information to do so and then the debate would focus only upon whether that data, including any responsive filing by the potentially affected recipient, confirmed the unsubsidized LTE coverage.

V. CONCLUSION

Based on the foregoing, NTCA – The Rural Broadband Association urges the Commission to adopt the Mobility Fund II challenge process as described herein.

Respectfully submitted,



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